

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEBORAH K. MURPHY-DAVIDSON, an
individual,

Plaintiff/Counter-Defendant,

v.

File No. 1:14-CV-779

KENNETH J. STOLL, an individual,
and COMFORCARE SENIOR SERVICES
MID MICHIGAN, a limited liability
company,

Defendants/Counter-Plaintiffs.

Excerpt of Jury Trial
Plaintiff's/Counter-Defendant's Opening Statement

Before

THE HONORABLE RAY KENT
United States Magistrate Judge
April 26, 2016

APPEARANCES

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Grand Rapids, Michigan

April 26, 2016

9:47 a.m.

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P R O C E E D I N G S

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MR. BONCHER: Thank you, Your Honor.

THE COURT: And Mr. Boncher, I know you remember this, but both lawyers please remember we have a 30-minute time limit on your opening statements.

MR. BONCHER: I timed it last night and I came out with 27 minutes, Your Honor.

THE COURT: Perfect.

MR. BONCHER: Hopefully I don't speak too slowly today.

Well, thank you again for giving up your time and your other pursuits and your work and leisure time and time spent with your family to serve as jurors in this case. That's why we have a free country, because of people like you.

I've already introduced Debbie Davidson, that's how I'll refer to her, as my client in this. Susan Knoll is one of the attorneys from our office, and on Wednesday another attorney, Tyler Osburn, will be here assisting me because Susan has to be in another courtroom that day.

1 I want to first of all kind of give you an overview
2 of the facts and then get into a little more detail explaining
3 what we expect the evidence to prove. And the main incident
4 involved in this case happened on August 5th, 2013, and that's
5 when we claim there was an assault and battery. Debbie will
6 testify to that as well as some other disinterested witnesses,
7 Mr. and Mrs. Donald Kring. She's also alleging besides
8 assault and battery stalking and intentional infliction of
9 emotional distress.

10 Now, let me tell you some of the background leading
11 up and some of the important facts. First of all, Debbie's a
12 certified medical assistant, and she's probably overqualified
13 for the job she was doing as a home health care worker, which
14 was only an eight-dollar-or-so-an-hour job. But she took that
15 job and on April 27th, 2013, attended a ComForcare
16 orientation. At that time she was shown some documents, but
17 she wasn't able to keep them or review them because
18 unfortunately she had to go take a urine test, and this will
19 be the evidence. And when she was out taking a urine test,
20 she had to do it twice and wait in between for obvious
21 reasons, and by the time she came back, they had already
22 scooped up all the paperwork. So she never really had an
23 employee handbook or never really got any of the documents,
24 one of which she signed.

25 Her first day of work was for the Krings, this

1 elderly couple who were in their late 80s, and since Mr. Kring
2 has now passed away. On May 1, 2013, she started working for
3 them nine hours a day. The Krings on June 3rd, 2013, and the
4 evidence will show this clearly, they terminated, and
5 according to their undisputed testimony they terminated
6 because they felt they had no longer any need for ComForcare's
7 services.

8 Then between June 3rd and August 8th, 2013,
9 Defendant Stoll appears three or four times at the home of the
10 Krings, and she started living with them in mid-July because
11 she had lost her living arrangements with a girlfriend because
12 her girlfriend's boyfriend came back, and the Krings liked
13 Debbie and asked her, you know, you don't have a place to
14 stay, come live with us. So mid-July she started living with
15 them, and these dates, you'll see and hear them repeated and
16 they're very important.

17 Debbie resigned, going back a little bit, on June
18 7th from her job with ComForcare. On June 3rd the Krings
19 said, you know, we don't need you anymore. Deb was only
20 working for the Krings. On June 7th she resigned, and on June
21 10th the defendant has acknowledged that as of at least that
22 time at the very latest, that they knew that she had resigned
23 from her employment.

24 On June 10th also, and this is part of the evidence
25 of the stalking, Mr. Stoll entered Debbie's home without

1 permission looking for her and came in. He said he knocked
2 three times and the door opened and he went in and confronted
3 her boyfriend who was there, and they -- you know, the
4 boyfriend obviously told him to get out. But Mr. Stoll went
5 in without any permission to her home, said he didn't see her
6 car there and he was worried about her. I don't think that
7 rings very true when you look at the facts as a whole, but
8 that's one of the evidences of stalking.

9 Then between June 7th and June 27th she received
10 many phone calls even though as of June 10 they knew that she
11 was no longer employed, phone calls from ComForcare and Mr.
12 Stoll, and he admitted that he had told one of his employees
13 to try and call her from time to time. He also followed her
14 around at Wal-Mart when she was at Wal-Mart and she'd see him
15 and go to a different department. He'd appear again and be
16 staring at her.

17 He also followed her around Meijer. In fact, she'll
18 describe a Meijer incident where she was in the lingerie
19 department and he was pretending to look at things all the
20 time while he was staring at her.

21 So we think there's more, many instances of
22 stalking, and as the judge will instruct you, there only has
23 to be two or more instances to qualify. In fact, Michigan,
24 unlike a lot of states, has an actual statute on stalking that
25 defines what stalking -- what certain specific items are

1 considered stalking by the legislature.

2 Then on June 27th, during this period of time Debbie
3 says, Quit calling me, you know. I don't want any contacts.
4 But nevertheless, on August 5th Debbie was at the home of the
5 Krings and she was assaulted by Mr. Stoll, and this -- I'll
6 turn this on.

7 Debbie's prepared a diagram, and this is just
8 demonstrative evidence. You won't be able to take this back
9 to the jury room. But the Englands were the daughter and
10 son-in-law of the Krings. This is the Krings' house and
11 here's the driveway. Debbie's car was parked over here. The
12 front door is here. And Mr. Stoll himself admitted that he
13 came in and peeked in the window, and Debbie will describe how
14 she saw him like that, what we used to call a peeping Tom when
15 I was young.

16 And the Krings were in here. They let Mr. Stoll in.
17 He knocked on the door and he started to get into an argument
18 with them about claiming they breached a contract by hiring
19 Debbie, and they didn't understand that. There was a very
20 loud argument.

21 Meanwhile Mr. Stoll had seen Debbie go from one side
22 of the house going to the bathroom on the other side of the
23 house, and he came through without permission after being let
24 in the front door and talking to the Krings, came back through
25 the house, got in an argument with Debbie, went through her

1 purse, threw stuff, dumped out her purse over by a table and
2 dumped out her nursing bag which had her stethoscope and other
3 things in them, grabbed a box. It was just a box that had
4 been given to her with gloves.

5 She'll testify that they gave her gloves originally
6 and she got two packages, but then she ran out of gloves and
7 kept calling and they didn't provide her any more gloves, so
8 she had to buy gloves which were a different color than the
9 gloves they provided to her. And he said, You have my box and
10 my gloves. Well, they were gloves she bought and they were in
11 a box that they gave her.

12 He tore that up and he threw things around, and then
13 he slammed her into the doorjamb and injured her very
14 severely, bruised her breast by pushing her like this, rammed
15 the door like a linebacker, twisted her arm, and caused some
16 very severe injuries that, you know, unfortunately have now
17 degenerated even more so that she's I would say totally
18 disabled. But those are the facts that happened very briefly
19 back on August 5, 2013.

20 Mr. Kring (sic) was, we contend, acting as an agent
21 for ComForcare because he was having arguments with the Krings
22 and Deb about breaching contracts with them. He and his wife
23 own this business, or she owns it technically and they manage
24 it together. So it's not like he was some employee without
25 authority from the higher-ups. He was the higher-ups. He was

1 the guy who ran it. And he had paperwork that he was accusing
2 the Krings of breaching a contract, poor old couple that
3 didn't know what was going on. He yelled and screamed at
4 Debbie, pushed her around, injured her greatly. So one of the
5 issues you'll have to determine is whether he was acting as an
6 agent of ComForcare at the time as well as acting as an
7 individual.

8 Truly a really sad situation with him pounding on
9 the door. Mr. Kring heard -- the Krings were up in the front
10 of the house. They didn't see what was happening and they
11 were, you know, in walkers and stuff, you know, semi-invalid.
12 I would call them invalids. That's why they needed care in
13 the first place.

14 But they'll testify, and they'll testify by a
15 transcript of a hearing that was held, that they heard Deb
16 say, You pushed me, and they heard the screaming and heard her
17 yelling. Mr. Kring said that Stoll terminated talking to me,
18 stomped on, went in and started yelling and screaming for
19 Deb. So it was a very vicious attack and very outrageous
20 actions, and that's one of the things you have to determine.

21 There was a -- she had -- Mr. Stoll will say, Well,
22 you took my gloves. Well, he didn't realize that those were
23 gloves that Deb had bought herself and that the box was a box
24 of gloves they had given her. So his defense on that is just
25 wrong.

1 He was swearing at them, using the F word, and
2 they -- both the Krings and Deb all commented under oath a
3 strong smell of alcohol on Mr. Stoll, although he denies that,
4 that he had been drinking at all. When he pushed her, he
5 bruised her breast, bruised her elbows, bruised her hips,
6 twisted her arm, slammed her three times on the door frame,
7 hurt her back, hit her head on the door frame.

8 And the Krings were present, couldn't see what
9 happened, but they said that Stoll smelled, quote, strongly of
10 alcohol. In fact, Mr. Kring testified there was no question
11 in his mind that Mr. Stoll had been drinking as he smelled
12 strongly of alcohol. Both Mr. and Mrs. Kring testified they
13 were, quote, afraid, end quote, scared or terrified of Mr.
14 Stoll, which as Debbie likewise felt, and that's one of the
15 elements of stalking. These actions have to cause someone to
16 be frightened or scared or terrified.

17 So we know exactly what they're going to say because
18 they're not available. They live in Florida now, and in fact
19 they moved to Florida in October of 2013 and then Deb moved
20 down to Florida in a different part of Florida in December of
21 2013. So we will be reading their testimony, and it will be
22 kind of like the Schenk, Boncher and Rypma players where I'll
23 play the part probably of Mr. Kring. That's just to make it
24 clear for you as we read the testimony, the questions and the
25 answers.

1 Susan here is going to play the part of the circuit
2 court judge because there was a hearing, what's called a PPO
3 hearing. Some of you may be familiar with divorces and all,
4 you run into those all the time, personal protection order,
5 where the Montcalm County circuit judge heard the testimony
6 first of all on an ex parte basis where Mr. Stoll didn't have
7 the opportunity to appear, issued a personal protection order
8 against Mr. Stoll based upon testimony given at that hearing.
9 You won't be able to hear that because it wouldn't be fair to
10 Mr. Stoll because he wasn't there.

11 But the second hearing you'll hear the testimony of
12 the Krings because Mr. Stoll was represented by his attorney,
13 Mr. Ginster, and they were there and they were able to
14 cross-examine the Krings at the time. So that was a hearing
15 the judge continued. That was a motion to try and terminate
16 the PPO that the Krings and that Debbie had gotten. The judge
17 ruled that she was going to continue it which would last for
18 six months.

19 After the altercation, Deb yelled, Please, somebody
20 call 911, and the evidence will show Mr. Stoll ran out of the
21 house before the police could arrive. He admits he took the
22 back roads to go back to his office. It took him a while to
23 get back there.

24 Despite what both the Krings, the disinterested
25 witnesses who aren't parties to this lawsuit, will testify

1 under oath and what Debbie testified saying about the assault
2 and describing it, ironically Mr. Stoll has claimed that he
3 was in fact assaulted by Debbie. Of course, he didn't tell
4 the police officer that. You don't see evidence of that, and
5 of course he had no injuries and he didn't suffer -- go for
6 any treatment.

7 But Debbie waited around for the police officer to
8 call after the 911 call was made to come. The police officer
9 came. She gave a report, and then the police officer took a
10 report from her and from the Krings. Two weeks later when Mr.
11 Stoll was present with his attorney, he gave his statement
12 too.

13 Right after the assault, as soon as the police
14 officer left, Deb went to the emergency room and was treated
15 by Dr. Harold Rumery of Spectrum Health. He saw her on August
16 5th, the same day. I think it was about 12:54. As soon as
17 the cop left, she went in and checked into emergency.

18 He examined her and he noticed she -- he diagnosed
19 post-concussive syndrome, left occipital contusion. That's a
20 bruise on the back of her head when she got slammed into the
21 door frame. Migraine, cephalgia, refractory to outpatient
22 care, probably triggered by head trauma. I mean, that's
23 severe headaches. Left posterior thorax contusions, that's
24 the middle of her back, with myelofascial pain syndrome and
25 spasms. You know, he could palpate and find actual spasms of

1 the muscles. Right shoulder strain and contusion, bruises on
2 her shoulder, and when he jerked her arm like that, it
3 actually affected her rotator cuff.

4 Lateral epicondylitis, right arm. That's --
5 epicondylitis, it's also called tennis elbow when you
6 hyperextend your elbow. And also a scratch on her forehead --
7 on her forearm, no bruises yet forming on her forearm. But
8 she also then had bruises on her breast and everything else
9 and bruises the doctor examined. She came back two days later
10 because she wasn't getting better and she was still having a
11 lot of pain and stuff, and then shortly after that she moved
12 to Florida.

13 It was the police officer -- the defendant is
14 claiming this is a case of malicious prosecution, that Deb
15 caused him to be wrongfully prosecuted. Well, it was the
16 police officer, not Deb, who decided to forward his report to
17 the prosecuting attorney. It was the prosecuting attorney,
18 not Deb, who chose to bring criminal charges against Mr. Stoll
19 for misdemeanor assault and battery.

20 Deb will testify she met with a victims' rights
21 representative even though she was moving away to Florida, but
22 she advised if necessary she'd come back for any trial.
23 Krings moved to Florida; Deb moved to Florida. The
24 prosecuting attorney never contacted her after that, never
25 told her when a trial would take place, but apparently would

1 know her forwarding address.

2 Then shortly there -- sometime like January, the
3 prosecuting attorney dismissed the charges, quote, without
4 prejudice. That means that there was no determination that
5 there wasn't an assault. There was no determination that
6 there was any false police report. What it means is the
7 charges were dismissed, and we may hear from the prosecuting
8 as to why, but basically without prejudice means it could have
9 been brought back again.

10 Meanwhile, the PPO order had still been going for
11 six months. Meanwhile Deb and the Krings, all witnesses had
12 moved to Florida. It was only a misdemeanor charge. So we
13 don't know, but whatever, the prosecutor in her discretion
14 without any input from Deb dismissed the charges, and she
15 didn't become aware of it until I think a year later.

16 So who's going to be testifying? What kind of
17 witnesses can you anticipate? First of all, Deb's going to
18 testify as to her background, her hiring, termination by the
19 Krings of the services of ComForcare on June 3rd. That's an
20 important date. Her quitting her job on June 7th. The
21 defendant admitted that she quit her job as of June 10th.
22 She's going to talk about the assault and battery which I
23 described, meeting with the police, her injuries, her
24 disabilities as a result of the assault, her loss of
25 employment. She got a job down in Florida working for a

1 dermatology office, and she'll describe how awful that was
2 because of the nerve injuries in her neck. Her life has
3 frankly become hell.

4 She'll talk about her economic damages to date
5 including lost take-home pay, and under the federal system you
6 look at the take-home pay and she's calculated that. Her
7 medical expenses that she's incurred and she still owes, some
8 of which she's paid. She lost insurance.

9 Her past non-economic damages include, among other
10 things, her pain and suffering, disfigurement. She had a
11 surgery, you know, has a surgery scar on her neck, and she'll
12 tell you how she's expecting to have three more surgeries.
13 She told me the other day I think my neck's going to look like
14 railroad tracks. Her pain and suffering, her loss of
15 enjoyment of life, embarrassment, mortification, anxiety.

16 She'll give you some estimates of future economic
17 damages considering until age 66 when now with Social
18 Security, that's when we can retire, although some of us have
19 not yet retired. She'll also talk about her -- what she is
20 expecting in the future as non-economic damages, whether this
21 pain and suffering's going to continue, whether she'll ever be
22 able to go to work, and unfortunately things do not look good
23 for Deb.

24 In fact, this morning she was supposed to come to my
25 office and she was late because when she got up, she was about

1 to leave and started vomiting because of the pain. That's a
2 daily occurrence for her, just about. When she was working
3 for the dermatologist, she'd arrive at work and she'd always
4 vomit in the parking lot.

5 From March 30th to May 15th of 2014, she'd just lay
6 in bed 50 percent of the time. The other 50 percent of the
7 time she'd be vomiting in the bathroom, all because of the
8 pain from this crushed nerve in her cervical vertebrae.

9 She then had her surgery which her doctor will
10 describe. In fact, you'll see him by a videotape deposition.
11 She suffered pneumonia, blood clots. Internal herpes zoster
12 she's had twice as a result of the surgery because her immune
13 system's so compromised. She was in bed for ten months. At
14 that point she was 75 percent on the bed and 25 percent
15 vomiting in the bathroom.

16 If she sleeps at all, she's in excruciating pain.
17 She may sleep two to four hours a night. She gets tired, has
18 to rest for everything. In fact, it takes five or six days
19 for her to drive up here from Florida because she can only go
20 a few miles before she has to stop and get out and rest or
21 vomit in the bathroom.

22 When she -- a typical day, she'll try and heat
23 something in the microwave. That's about all she can do.
24 She'll take naps all day. She can't even get comfortable
25 enough to watch TV because she can't stay in one place where

1 she's comfortable to watch a full show on TV.

2 She only showers about every three to five days
3 because it's too exhausting to bathe herself and wash her
4 hair. She'll testify that she has to rest for like two hours
5 because she doesn't have any energy left just from taking a
6 shower and washing her hair.

7 She can't do any vacuuming or anything like that.
8 She can't -- can only use really one hand. She can't type on
9 a computer. She can't even look on a computer because it
10 hurts to put her head down like that for any period of time.
11 She can't dust. Cleaning the bathroom is difficult. She
12 can't clean the shower.

13 Fortunately, Brian Jones is her fiance, and
14 everybody should have a fiance like him that cares for you
15 every day and puts up with her despite all her pain and
16 dizziness and her inability to drive anywhere. She's totally
17 dependent upon him. She can't have any sex because the
18 exertion's too painful. She used to like to cook fancy meals,
19 make jewelry. She can't look down to work on jewelry. She
20 can't do her computer, can't type.

21 She used to be very prideful of her appearance, as
22 fortunately all of us want to be. That obviously not only
23 affects the way she looks, but the way she feels. She has no
24 quality of life at all. She has anxiety, stress and fear.
25 She feels like her personality has changed. She doesn't trust

1 strangers. She's afraid of other people. She wakes up with
2 nightmares. Her personality has changed. In other words, her
3 damages are just excruciating and she'll describe all that.

4 As I said, you'll hear from Dr. Arthur Browning, her
5 treating physician in Florida who continues to care for her.
6 His testimony will be by videotape. We can take a videotape
7 deposition now, which is a little more interesting for you
8 than somebody dryly reading what a doctor says by a
9 deposition, but you'll actually get to see him testify. He's
10 out of state and not able to be brought here, so the Court
11 allows us to do that.

12 Dr. Browning is going to testify among other things
13 that, one, Deb has gotten worse since he first started
14 treating her. Two, she has damaged her peripheral nerves,
15 especially in her back. Three, he prescribed physical therapy
16 for her, but that was successful. He's prescribed facet
17 injections into her neck with topical steroids and medication,
18 a very dangerous thing to do -- they have to put it in just
19 right into your neck; if they don't, you can be paralyzed from
20 the neck down -- with a long needle.

21 She was in a great deal of pain every time he saw
22 her. He found this need for cervical decompression, went
23 through the front of her neck, leaving that scar. She's got
24 continued pain. She had the blood clot, pneumonia from the
25 surgery, unable to work, unable to return to work. And he'll

1 say that the cause of all of her problems was the assault and
2 battery by Mr. Stoll, and there was no other cause of those.

3 She can't engage in any sports activities. She's
4 not faking her injury. He'll testify her pain is consistent
5 with his objective findings. She's in constant pain, need for
6 meds. She has constant very severe headaches and elbow
7 problems and shoulder problems.

8 On behalf of the plaintiff, after Deb and then we
9 hear from the Krings, we'll be playing the parts of the
10 Krings, and Dr. Browning, then the plaintiff will rest and
11 we'll conclude our case-in-chief. Defendant will then bring
12 their case, and I'm sure Mr. Stoll is going to present a
13 different story.

14 He'll claim that, oh, there was no assault. I never
15 touched her. In fact, she assaulted me. And yet you'll hear
16 from the disinterested non-party witnesses, the Krings, that
17 give a totally different story than Mr. Stoll's.

18 The defendants have also brought counterclaims as
19 you heard the judge indicate against Deb, including breach of
20 contract, and I think the testimony is going to show that
21 there was no breach of contract by Deb at all because the
22 contract would require her to be working for someone else
23 other than ComForcare while she was employed. But the
24 evidence is clearly going to show that the Krings fired
25 ComForcare on June 3rd. Deb quit shortly thereafter.

1 She did go and do some work for the Krings after she
2 moved in with them. In mid-July they asked her to move in.
3 And in August, the first week of August, she was willing to
4 help them out because they apparently needed a little bit of
5 help. But that was two months after her employment was
6 terminated, so she didn't violate any contract, and I think
7 you'll find that very clear.

8 Also, they will bring a cause of action for -- and a
9 counterclaim for not only breach of contract, but for
10 malicious prosecution and intentional interference with
11 contractual relationships. The judge briefly told you what
12 those causes of actions were, and it's important that you
13 think about that. And usually you hear all these at the end
14 of the jury trial, what your jury instructions are, which I
15 think jurors are at a disadvantage when you hear at the end,
16 you know, what you're supposed to be deciding on. So the
17 judge thankfully already gave you some idea what to expect on
18 what has to be proved, and I want to just briefly go over some
19 of that as well.

20 First of all, on the assault and battery, we have to
21 prove that plaintiff -- that there was an intentional engaged
22 in an attempt to cause physical injury to the plaintiff.
23 That's an assault. If you bring your fist back, that's an
24 assault. When you connect, it becomes a battery. We're
25 claiming assault and battery. He pushed her. He threatened

1 her. That's an assault, and then the battery is the actual
2 infliction of violence. So we think that's very clear.

3 Civil stalking, as the judge said, the defendant
4 engaged in a civil -- in a willful course of conduct involving
5 repeated or continuing harassment of the plaintiff, and that
6 can include as set forth in the Michigan statute following or
7 appearing within the sight of that individual. He came to her
8 house on June 10th uninvited, walked in, almost a breaking and
9 entering.

10 Approaching her, confronting that individual in a
11 public place. She'll testify that happened both at Meijer's
12 and at Wal-Mart and also at the home of the Krings.

13 Appears at the individual's workplace or residence.
14 Well, there's another one which he went to her house on the
15 10th and also then on the 5th of August.

16 Entering or remaining on property occupied by the
17 individual. He came in, you know, went through the house not
18 when -- he was invited into the front room, but then he went
19 beyond that scope of invitation to the back.

20 Contacting that individual by telephone. She'll
21 testify there were a number of calls to and, you know, from,
22 you know, texts and calls. We only need two incidences and
23 there are probably 15 or 20 altogether.

24 Placing an object on property owned or leased by
25 that individual. Well, he admits he went in and put his card

1 at her house when he came in when she wasn't home. So we
2 think that you're going to find that the stalking is going to
3 be clearly proved as well.

4 Intentional infliction of emotional distress. As
5 the judge said, that has to be the defendant engaged in
6 outrageous conduct. I think you'll find that the conduct of
7 Mr. Stoll was outrageous, and also that he was acting within
8 the scope of his employment because he was trying to enforce
9 or argue about contracts with ComForcare, not with him
10 individually. Also, that she suffered severe distress. I
11 think you'll find that as well.

12 On the intentional interference with contractual
13 relations, one of the defendant's claims, first of all, they
14 have to show that she knew of an existence of a contract
15 between the Krings and ComForcare, and you'll find the
16 testimony is she didn't know of any contract. Nobody ever
17 told her, never gave her -- in fact, the Krings didn't even
18 know of any contract they signed, which their testimony, if
19 not clearly state, will certainly imply.

20 Second of all, the defendant has to show that
21 somehow Debbie unjustfully and intentionally instigated or
22 persuaded the party, the Krings, to terminate the contract.
23 Well, the Krings will testify that we decided to terminate the
24 services, they didn't know about the written contract, because
25 we didn't need them anymore. So there will be no proof of

1 that either.

2 Third of all, the defendant showed -- suffered
3 damages as a result of this interference with contracts.
4 Well, the testimony will show that ComForcare and Mr. Stoll
5 knew what the credit card number was of the Krings and without
6 their authorization charged \$5,000 to their credit card. So
7 besides that being pretty outrageous conduct, it also shows
8 they had no damages from any breach or interference with
9 contractual relationships.

10 And then on malicious prosecution, they have to
11 prove there was a false criminal complaint. Well, they've got
12 the Krings talking about what they witnessed in the assault
13 and battery as well as Deb, so it certainly wasn't false. And
14 that she knew that the complaint was false. Well, she didn't
15 know the complaint was false because it was true. And
16 finally, that she undertook to make a police report for malice
17 and reasons other than proper reasons like making sure that
18 someone who commits an assault and battery is brought to
19 justice.

20 So when you see all those facts, think about those
21 elements, and you'll hear the jury instructions at the end,
22 and I think you are going to agree with me that plaintiff will
23 have proved her case by the preponderance of the evidence,
24 swinging the scales of justice in her favor, and that she will
25 have proven tremendous injuries and damages that you have to

1 come up with a figure on, which I always struggle with. You
2 know, it's easy to, you know, get some figures on economic
3 damages like lost wages, but how do you put a number on pain
4 and suffering probably for the rest of your life and the way
5 she goes through every day?

6 And we also believe that at the end of all the
7 trial, at the end of your deliberations, you'll find that
8 there's no basis whatsoever for the claims, the counterclaims
9 of the Defendant ComForcare and the counterclaim of Defendant
10 Stoll.

11 With that said, I think I made it under a half hour.

12 THE COURT: You did.

13 MR. BONCHER: Thank you, Your Honor. That's unusual
14 for me, as you know.

15 Thank you once again, sincerely. You know, I was in
16 the service during Vietnam for a time and I saw a lot of brave
17 people who served their country. You're serving your country
18 here today. Thank you.

19 (End of excerpt.)
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CERTIFICATE OF REPORTER

I, Kevin W. Gaugier, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript was prepared by me.

/s/ Kevin W. Gaugier

Kevin W. Gaugier, CSR-3065
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